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Testimony of Rep. Mary Mushinsky (85th) in Support of CB 6270, An Act Concerning
Home Bakeries

Before Public Health Committee

March 4, 2015

Rep. Ritter, Sen. Gerratana, and PH Cmte members:

I support the bill, which was suggested by a constituent. Why can't she make her own baked goods (breads) and sell them like the farmer's market does? This is an opportunity to earn money for her family and provide a locally-produced food product. The answer is that CT law forbids it, and the Dept. of Public Health has opposed the bill to change the law for years. Home bakeries are allowed in many other states. But CT's Public Health Commissioner is worried about norovirus and the agency has worked to kill the bill in prior sessions.

There are a couple of ways to create a compromise. We could label the products as home-based and let buyers know they have not been inspected by the Department. Local buyers will not be fazed by this label, as they already buy from each other at local events such as school bake sales. Or, we could try an idea suggested by a conversation with another constituent. He worried about the sustainability of the local Grange Hall (an agricultural support organization with a presence in many municipalities). It has a large kitchen and the organization has vast institutional knowledge of safe food preparation. Why not allow community partnership bakeries for home bakers (using existing community kitchens, such as American Legion or the Grange) which the DPH could oversee?

Thanks for raising the bill.

Attachment: OLR report

1994 Office of Legislative Research Report
June 22, 1994 94-R-0541

TO:

FROM: Daniel Duffy, Principal Analyst

RE: Food Prepared in the Home for Sale

You asked if state law prohibits bake sales, potluck suppers, and other events where home-made food is sold. You also wanted to know if these sales are permitted in New York and the rest of New England.

SUMMARY

Connecticut has the most restrictive laws concerning the sale of food prepared in home kitchens among the surveyed states. Connecticut requires all food for sale to be prepared in commercial kitchens, with a limited exception for jams, jellies, and preserves made from fruit grown on a residential farm.

Every other state but Rhode Island licenses or registers home kitchens, and Rhode Island unconditionally exempts private homes from licensing. All of the licensing states limit a home kitchen's sales to food, which does not have the potential to become hazardous. Maine has simple regulations applying specifically to home kitchens. Vermont also takes a basic approach. It requires home kitchens to be inspected "to the maximum extent feasible" considering the fact that the kitchens are located in homes. Massachusetts and New Hampshire regulations both specify which commercial kitchen regulations apply to home kitchens and which do not. Massachusetts also indirectly limits the size of a home kitchen's business. It prohibits the operator of a home kitchen from employing anyone who is not an immediate family member living in the household. A New York statute permits the agriculture commissioner to exempt home kitchens under certain circumstances, including making a finding that the exemption would avoid unnecessary regulation. The agriculture department registers rather than licenses home kitchens and prohibits them from selling potentially hazardous food, acidified food packed in closed containers, and prepared vegetables, poultry, meat, meat products, fish, or seafood.

Every surveyed state, except New York, allows food prepared in homes to be sold in special events like bake sales or potluck dinners. Massachusetts exempts from licensing any event held for a service organization. New Hampshire's exemption is also for charitable events, but it also limits the exemption to four days in any 30-day period. Vermont's exemption is for any event held on one day in a calendar month. Maine's exemption is unwritten state agency practice.

CONNECTICUT LAW

Connecticut law generally prohibits the sale of home-made food. The Connecticut Food, Drug and Cosmetic Act prohibits the sale of adulterated food (CGS § 21a-93). It considers any food adulterated if it "has been produced, prepared, packed or held under unsanitary conditions. . . ." (CGS § 21a-101.). Implementing regulations defining sanitary standards prohibit making any food for sale in any room used for residential purposes (*Conn. Agencies Reg.* § 21a-101-3(f)(3)).

The Public Health Code also prohibits the sale of home-made food. The code, among other things, sets sanitary standards for food offered for sale. One such standard prohibits operations connected with a food service establishment from being "conducted in any room used as living or sleeping quarters" (*Conn. Agencies Reg.* § 19-13-B40).

Jams, Jellies, and Preserves

The legislature adopted a limited exception to the prohibition for jams, jellies, and preserves (PA 94-23). The legislation allows the sale of these products prepared in a room used as living quarters on a residential farm and exempts their preparation from inspections by state or local agencies under either the Connecticut Food, Drug and Cosmetic Act or the Public Health Code. To be exempt, the food must (1) be prepared with fruit grown on the seller's residential farm and (2) bear a label in 10-point type stating: "Not prepared in a government inspected kitchen."

The act defines jam, jelly, and preserves in a way intended to assure that the products do not have the potential to become a hazardous medium for disease-causing microbes. All three must have a pH value of 4. 6 or less, meaning they must be relatively acidic and unlikely to serve as a culture for bacteria.

APPROACHES TAKEN IN NEIGHBORING STATES

Maine

Maine's Department of Agriculture, Food and Rural Resources adopted regulations requiring home kitchens to be licensed as "home food manufacturers" (*Dept. of Agric. , Food & Rural Res. Regs. ,* Ch. 345). The department has an unwritten administrative policy of exempting anyone preparing food for a one-day event, according to Gerry Prentice, Consumer Food Supervisor.

The department's regulations are pragmatic. In addition to requiring equipment to be adequate and sanitary, they state "No animals or birds or uncontrolled children shall be allowed in the food preparation area."

Massachusetts

Massachusetts also permits food prepared in home kitchens to be sold but requires most home kitchens to be licensed by local boards of health.

Operators of home kitchens who want to sell their products must obtain a food establishment permit. The permit is limited to preparing food that is not potentially hazardous. Permit holders may not engage in wholesale operations or sell through the mail. Only immediate family members living in the household may prepare food for retail sale.

State regulations exempt home kitchens from many requirements pertaining to commercial kitchens, such as those requiring a review of plans. They specify which of these requirements apply to home kitchens, such as keeping food fit for consumption and setting standards for handling and storing milk, milk products, and eggs. Finally, they establish special requirements pertaining to home kitchens. These allow kitchens to use potentially hazardous ingredients, such as milk and eggs, as long as the final product is not a potentially hazardous food and the ingredients are stored and handled properly.

State statutes exempt from licensing home preparers of food for sale by fraternal, charitable, social, or service clubs or similar organizations for a "neighborhood bake sale" (*ALM*, Ch. 94, § 1). The statutes accomplish this by excluding home kitchens preparing food for these groups from the statutory definition of "bakery," thereby exempting them from the requirement that bakeries be licensed.

Similarly exempt is preparing food for donation to a nonprofit corporation for distribution without charge or a minimal charge to pay for handling costs (*ALM*, Ch. 94, § 328).

New Hampshire

New Hampshire also licenses home kitchens and exempts food prepared for events like bake sales or potluck dinners (Ch. 143-A).

As in Massachusetts, home kitchens are exempt from several standards applying to commercial kitchens, including those requiring commercial equipment, more than two sinks, covered base molding, or a complete separation between the kitchen and any living or sleeping area (*N. H. Regs.*, He-Part 2329).

The regulations also prohibit home kitchens from manufacturing potentially hazardous food, home canned foods that require pressure cooking, and foods which require refrigeration. According to Paul Raiche, Division of Public Health Services, the state is considering amending the regulations to make the prohibition against preparing pressure cooked foods more enforceable.

State law exempts from licensing any "occasional food service establishment," defined as one operated by a private or public organization, whether or not it is organized for profit, which prepares and sells food or beverages for no more than four days during any 30-day period.

New York

New York allows the sale of food prepared in the home **but** requires home kitchens to be registered rather than licensed. State statutes permit the agriculture commissioner to adopt regulations exempting small food processing establishments from licensing if he believes that (1) consumer protection will not be impaired, (2) the exemption avoids unnecessary regulation, and (3) the exemption assists in the administration of the state's food law without impairing its purposes. The statute permits the regulations to classify exempted establishments according to the volume and types of food handled, the types of processing involved, or any other reasonable factor. It permits the exemptions to be conditioned on requirements relating to sanitation, record keeping, and reporting (*N. Y. Agric. & Markets Law*, § 251-z-4).

State regulations require food processed at home to be clean and sanitary and labeled to show (1) the processor's name and address; (2) the common or usual name of the food and its ingredients; and (3) the net weight, standard measure, or numerical count. Glass containers for jams, jellies, marmalades, and similar products must have suitable rigid metal covers (*N. Y. Agric. & Market Reg.*, Part 276).

Home processors may cook for sale only in their own home's kitchen. They may not prepare for sale food that is potentially hazardous, which is defined as perishable food consisting in whole or part of milk or milk products, eggs, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The regulations also prohibit home kitchens from selling thermally processed low-acid food packaged in heat-sealed containers, acidified foods packed in closed containers (such as pickles and relishes), vegetables, poultry, meat, and meat products.

A Department of Agriculture and Markets memorandum to its field staff states that home processors, although exempt from licensing, must be registered and inspected initially and thereafter in response to complaints or evidence of a problem. The report also identifies some of the food that may be produced in the home under the license exemption: bread or rolls; jam, jelly, marmalade or similar products; cookies; brownies; fudge; double crust fruit-type pies, cakes which do not require refrigeration; candy (but not chocolate); spices; herbs; and snack items such as popcorn, caramel corn, and peanut brittle (Memorandum, J. J. Corby, February, 1991).

The regulations also exempt maple syrup and honey processors which comply with specified conditions, including keeping the premises free from insects other than those involved in the preparation of the product.

Rhode Island

Rhode Island statutes generally require food selling establishments and their managers to be licensed. But the law exempts (1) special events sponsored by town or nonprofit civic organizations (such as school sporting events, firemen's picnics, little league food booths,

grange and church suppers, and fairs), (2) temporary food services occurring less than six times per year (such as bazaars, bake sales, and suppers), (3) itinerant vendors selling only prepackaged food and beverages, (4) retail establishments where only cold food is prepared, and (5) private homes and bed and breakfast inns (*R. I. Gen. Law*, § 21-27-11.8).

Vermont

Vermont allows licensed home kitchens to sell food and exempts events like bake sales or potluck dinners.

State regulations define "home caterer" as an establishment where food is prepared using standard home equipment and sold on a take-out basis or to commercial establishments for resale. They require home caterers to be inspected "to the maximum extent feasible considering the fact that the establishment is located in the same facility the licensee uses as a primary residence. "

The regulations exempt from licensing any establishment which only sells on an occasional basis, defined as not more than one day during any month (*Vt. Health Regs.* § 5-201 to 5-222, inc.).

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